

REMARKS

The Office has required restriction in the present application as follows:

Group I: Claims 14-23, drawn to a process of making a lactic acid bacterial culture in a medium containing at least one porphyrin compound;

Group II: Claim 24, drawn to various lactic acid bacterial starter cultures;

Group III: Claim 25, drawn to a process of making a fermented product; and

Group IV: Claim 26, drawn to a process of increasing the survival of lactic acid bacteria.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. M.P.E.P. § 803.

Applicants respectfully traverse the requirement for restriction on the grounds that the Office has not provided adequate reasons and/or examples to support a conclusion of patentable distinctness between the identified groups.

Applicants respectfully submit that the Office has simply concluded that the inventions of Groups I-IV are not linked by a common special technical feature, but has provided no convincing reasons in support thereof. The Office states that the inventions of "Groups I, III, and IV are drawn to include different processes having different steps inquiring different results or effects". However, Applicants note that Claims 24 and 25 depend from Claim 14, and therefore cannot reasonably be characterized as including different processes having different steps. Thus, Applicants respectfully submit that the Office's statement, noted above, is incorrect, and therefore the conclusion that the claimed inventions do not share a common special technical feature is also incorrect.

Moreover, the Office states that Kaneko provides evidence that “a technical relationship is lacking among the claimed inventions”. Applicants respectfully disagree with the Office’s characterization of Kaneko. Applicants note that Kaneko does not teach the production of a starter culture, but is rather intended as a method of producing diacetyl and acetoin (col. 1, lines 9-17), and does not include a step of harvesting the bacteria. Furthermore, although Kaneko reports enhanced growth, Kaneko does not teach improving the viability of lactic acid bacteria. Enhanced growth and improved viability are quite different properties. Thus, Applicants respectfully submit that Kaneko fails to support the Office’s contention that “a technical relationship is lacking among the claimed inventions”.

The Office also states that “the inventions of groups I-IV do not match a permitted category as PCT Rule 13.2 does not provide for multiple methods or products in one category.” Applicants fail to note any reference to a “permitted category”, or a prohibition of “multiple methods or products in one category” in PCT Rule 13.2.

Moreover, M.P.E.P. § 803 states:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants respectfully submit that a search of all of the claims would not impose a serious burden on the Office.

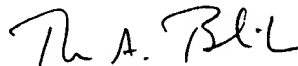
Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Application No. 09/508,514
Reply to Office Action of July 24, 2003

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, an early notice thereof is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No. 24,618

Tel: (703) 413-3000
Fax: (703) 413 -2220

Thomas A. Blinka, Ph.D.
Registration No. 44,541



22850